IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2880 OF 2005

Ciba India Private Limited Company. .. Petitioner
v/s.
A.M.Jadhav & ors. .. Respondents

Mr.Nitesh Joshi with Mr.B.D.Damodar i/by M/s.Kanga & Co. for petitioner.

Mr.Ashok Kotangale for respondents.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 19th December 2005

P.C. :

1. Heard Mr.Joshi in support of this Petition. Mr.Kotangale appears for the respondents.

2. Rule. Rule is made returnable forthwith. This Petition is seeking to challenge the Notice dated 14th May 2004, issued under Section 148 of the Income Tax Act, 1961 whereby the assessed income of the petitioner for the year 1999-2000 is sought to be reopened under Section 147 of the Income Tax Act, 1961. Reasons given in support of this Notice state as follows:-

> " In this case, the assesee has claimed deduction u/s. 35(1)(iv) of the I.T. Act, 1961 amounting to Rs.6,53,24,471/- being capital expenditure on scientific research related to the business. Perusal

> of the return and its annexures viz. Directors'' report, auditors' report, etc. shows that the assessee is engaged in the business of scientific research related to the group companies.
>
> Section 35(1)(iv) provides for 100% deduction for capital expenditure incurred by the assessee on scientific research related to the business carried on by the assessee. In the case of the assessee company, the scientific research is not related to the business carried on by the assessee, but scientific research itself is the business of the assesee company. Hence, the provisions of section 35(1) are not applicable to the assesee.
>
> The assessee company has, therefore, wrongly claimed deduction of Rs.6,53,24,471/- u/s.35(1)(iv) and hence, income to that extent has escaped assessment. Issue notice u/s.148. "

3. Mr.Joshi appearing for the petitioner submitted that under Section 147 of the Income Tax Act, reopening of the assessment after the expiry of four years from the end of the relevant assessment year can be resorted to only if there is failure on the part of the assessee to disclose fully and truly all material facts. He further submitted that from the reasons recorded for reopening the assessment, it can be seen that there is no allegation of failure on the part of the assesee to disclose fully and truly all material facts. He has drawn our attention to the return of the petitioner for the relevant period. From the Directors' report, tax audit report annexed to the return it is pointed out that the

petitioner was carrying on research work for CIBA Group of Companies. Moreover, pursuant to the query raised by the assessing officer at the time of original assessment, the petitioner by its letter (Annexure-E at page 109 of the paper-book) clearly informed the assessing officer that the petitioner is the wholly owned subsidiary of Ciba Speciality Chemicals Intn., Basle. It was further stated that the petitioner-Company was incorporated in 1995 with the main purpose of conducting specialized research and development activities in India on behalf of the parent Company. Accordingly, it was submitted that there being full and true disclosure made by the assessee, the reopening of the assessment beyond four years is liable to be quashed and set aside.

4. Mr.Kotangale, learned Counsel for the revenue, submitted that the deduction under Section 35(1)(iv) is available only if the capital expenditure incurred is in respect of scientific research related to the business carried on by the assessee. In the present case, the research work itself is the business of the petitioner and, therefore, the deduction under Section 35(1)(iv) is not available to the petitioner. Accordingly, the Counsel for the revenue submitted that the

reopening of the assessment is justified.

5. The issue raised in this Petition is with regard to the reopening of the assessment and not the merits of the case. The question is, whether there is failure on the part of the assessee to disclose fully and truly all material facts so as to reopen the assessment beyond four years. In the present case, it is demonstrated by the petitioner that the fact that the research work was to be carried out for the benefit of the group Companies was specifically brought to the notice of the assessing officer at the time of original assessment and after considering the above facts the assessing officer has granted deduction under Section 35(1)(iv) of the Income Tax Act. Therefore, it cannot be said to be a case of failure on the part of the assessee to make a return and to disclose the full and true material that was necessary at that time. If there is no failure on the part of the assessee to disclose fully and truly all material facts then the reopening of the assessment beyond four years cannot be sustained. For this reason alone, in our view, the Notice dated 14th May 2004 issued under Section 148 will have to be quashed and set aside.

5. In the circumstances, we allow this Petition. The impugned Notice dated 14th May 2004 will stand quashed and set aside. Rule is accordingly made absolute as above. No order as to costs.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)